

Part I
Definitions
(RAP Meeting 2/22/2013)

4VAC50-80-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Nutrient Trading Act, Article 1.1:1 (§ [10.1-603.15:1](#) et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Additionality" means a concept in which credits sold by a nonpoint source to a point source must be the result of load reductions that would not have been made without the trade (i.e., they must be in addition to expected "no-trade" load reductions). (WRI Fact Sheet)

"Aggregator" means a public or private entity that packages and offers for sale credits from multiple practices or sources in one or more instruments for use by a credit buyer. (SNR Report)

"Applicant" means the person who submits an application to the department for credit certification pursuant to this chapter.

"Bank sponsor" means any public or private entity responsible for establishing, and in most circumstances, operating or provide for operation of a nutrient bank. (based on Corps' Banking Instrument)

"Baseline" means the practices, actions, or levels of reductions that must be in place before credits can be generated. (SNR Report)

"Best management practice," "practice," or "BMP" means a structural practice, nonstructural practice, or other management practice used to prevent or reduce nutrient loads reaching surface waters or the adverse effects thereof. (ACT)

"Board" means the Virginia Soil and Water Conservation Board. (4VAC50-60-10)

"Bundling" means the packaging and offering for sale credits from multiple practices or sources in one or more instruments as subject to restrictions. (based on aggregator definition in SNR Report)

"Credit generating facility" means an individual, corporation, partnership or other entity that proposes to or has certified credits placed on the Virginia Nutrient Credit Registry.

33 "Delivered load" means the amount of pollutant delivered to the tidal waters of the
34 Chesapeake Bay or its tidal tributaries or runoff after accounting for permanent
35 reductions in pollutant loads due to natural in-stream processes in nontidal rivers. (SNR
36 Report)

37 "Department" means the Department of Conservation and Recreation. (ACT)

38 "Director" means the director of the Department of Conservation and Recreation or his
39 designee. (4VAC50-60-10)

40 "HUC" means the hydrologic unit code.

41 "Management plan" means a plan that has been developed to meet the requirements of
42 4VAC50-90 and is submitted as part of the Nutrient Reduction Implementation Plan.

43 "Mitigation banking instrument" means the legal document for the establishment,
44 operation, and use of a mitigation bank. (§ 332.2 of the Federal Register, Vol. 73, No.
45 70)

46 "MS4" means a municipal separate storm sewer system. (ACT)

47 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous,
48 hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather
49 are washed from the land surface in a diffuse manner by stormwater runoff. (4VAC50-
50 60-10)

51 "Nutrient bank" means a private or public entity that creates and sells or brokers sale of
52 credits. (SNR Report)

53 "Nutrient credit" or "credit" means a nutrient reduction that is certified pursuant to this
54 chapter and expressed in pounds of phosphorus or nitrogen either (i) delivered to tidal
55 waters when the credit is generated within the Chesapeake Bay watershed or (ii) as
56 otherwise specified when generated in the Southern Rivers watersheds. (ACT)"

57 "O&M Plan" means the operations and maintenance plan.

58 "Perpetual Credits" mean nutrient reduction actions that are a permanent reduction from
59 baseline dates and conditions. (SNR Report)

60 "Person" means any individual, corporation, partnership, association, state, municipality,
61 commission, or political subdivision of a state, governmental body, including a federal,
62 state, or local entity as applicable, any interstate body or any other legal entity.
63 (4VAC50-60-10)

64 "Registry" means the online Virginia Nutrient Credit Registry established and
65 maintained by the Department in accordance with subsection C of § 10.1-603.15:2 of
66 the Code of Virginia. (based on ACT)

67 "Released credit" means certified credits that the department has determined to meet
68 the conditions for release and subsequent sale following placement on the Virginia
69 Nutrient Credit Registry..

70 "Service area" means the defined area where specific credits can be traded, usually
71 within the same of adjacent HUC.

72 "Site" means the physical location where the nutrient bank credits have been generated
73 and registered in accordance with this chapter.

74 "Site protection instrument" means a conservation easement or other mechanism as
75 approved by the department.

76 "Term credit" means nutrient reduction activities that generate credits for a determined
77 and finite period of at least one year. (SNR Report)

78 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload
79 allocations for point sources, load allocations (LAs) for nonpoint sources, natural
80 background loading and a margin of safety. TMDLs can be expressed in terms of either
81 mass per time, toxicity, or other appropriate measure. The TMDL process provides for
82 point versus nonpoint source trade-offs. (4VAC50-60-10)

83 "Tributary" means those river basins for which separate tributary strategies were
84 prepared pursuant to § [2.2-218](#) of the Code of Virginia and includes the Potomac,
85 Rappahannock, York, and James River Basins, and the Eastern Coastal Basin, which
86 encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of
87 Route 13 and drain into the Chesapeake Bay. For areas outside of the Chesapeake Bay
88 Watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal;
89 Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper
90 Tennessee); New River; Roanoke; and Yadkin. (based on § [10.1-603.8:1](#) of the Code of
91 Virginia)

92 "Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit"
93 means a document issued by the State Water Control Board pursuant to the State
94 Water Control Law authorizing, under prescribed conditions, the potential or actual
95 discharge of pollutants from a point source to surface waters and the use or disposal of
96 sewage sludge. (4VAC50-60-10)

97 "Virginia Stormwater Management Program" or "VSMP" means the Virginia program for
98 issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing

permits, and imposing and enforcing requirements pursuant to 4VAC50-60. (4VAC50-60-10)

"Watershed Implementation Plan" or "WIP" means the Phase I WIP strategy submitted by Virginia and approved by EPA in December 2010 to meet the nutrient and sediment allocations prescribed in the Chesapeake Bay Watershed TMDL or any subsequent revision approved of EPA. (SNR Report)

For the above definitions section, the source citations for each term are provided in the parentheses following the definition. The links to these sources are as follows:

- 4VAC50-60-10: [Definitions](#) from the VSMP Permit Regulation.
- ACT: § [10.1-603.15:1](#) of the Code of Virginia.
- MS4 Amendment: [4VAC50-60 Proposed Regulation for MS4 Amendment](#). *Please note, this amendment is currently in the proposed stage and has not yet been adopted.*
- SNR Report: [Proposed Expansion of the Use of Nutrient Credits in Virginia pursuant to Senate Joint Resolution 334 \(2011\), Report of the Secretary of Natural Resources to the Governor and the General Assembly, January 2012](#).
- WRI Fact Sheet: [WRI Fact Sheet, Comparison Tables of State Nutrient Program in the Chesapeake Bay Watershed, Version I, May 2011](#).

Part II
General Information
(RAP Meeting 2/22/2013)

4VAC50-80-20. Authority.

A. This chapter is issued under authority of §10.1-603.15:2 of the Nutrient Trading Act, Article 1.1:1 of Chapter 6 of Title 10.1 of the Code of Virginia (§10.1-603.15:1 through §10.1-603.15:5).

B. The director is authorized and directed to administer this chapter in accordance with the Act.

4VAC50-80-30. Purpose and applicability.

A. The purpose of this chapter is to establish standards and procedures pertaining to the certification and monitoring of nutrient credits other than point source nitrogen and point source

phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14.

B. This chapter applies to all persons who apply for and receive nutrient credits certified by the board and department in accordance with the act and this chapter.

C. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the Department of Environmental Quality prior to July 1, 2012, shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirements of this chapter. However, such facilities shall be subject to all other provisions of this chapter, including registration under 4VAC50-80-80.B, and inspection, reporting, and enforcement requirements pursuant to Part IV.

4VAC50-80-40. Relationship to other laws and regulations.

A. Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).

1. Part XIV, General VSMP Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1100 et seq.). Those applicants required to comply with water quality requirements for land-disturbing activities operating under a general VSMP permit for discharges of stormwater from construction activities issued pursuant to Part XIV of 4VAC50-60 may acquire and use perpetual nutrient credits certified and registered on the registry.

2. Part XV, General VSMP Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (4VAC50-60-1200 et seq.). As specified in § 10.1-603.15:3.A, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any waste load allocations established as effluent limitations in an MS4 general permit issued pursuant to Part XV of 4VAC50-60.

3. VSMP Individual Permits for Discharges from Construction Activities. Those applicants required to comply with water quality requirements for land-disturbing activities operating under a construction individual permit issued pursuant to 4VAC50-60 may acquire and use perpetual nutrient credits certified and registered on the registry.

4. VSMP Individual Permits for Municipal Storm Sewer Systems. As specified in § 10.1-603.15:3.A, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any waste load allocations established as effluent limitations in an MS4 individual permit issued pursuant to 4VAC50-60

B. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). Confined animal feeding operations issued individual permits pursuant to 9VAC25-31 may acquire, use and transfer credits for compliance with any waste load allocations contained in the provisions of a VPDES permit. Such method of compliance may be approved by the State Water Control Board following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

C. General VPDES Permit for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151). Facilities registered under 9VAC25-151 for a general VPDES permit may acquire, use, and transfer credits for compliance with any waste load allocations established as effluent limitations in a VPDES permit. Such method of compliance may be approved by the State Water Control Board following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

D. General VPDES Permit for Concentrated Animal Feeding Operations (9VAC25-191). Confined animal feeding operations registered under 9VAC25-191 for a general VPDES permit

may acquire, use and transfer credits for compliance with any waste load allocations contained in the provisions of a VPDES permit. Such method of compliance may be approved by the State Water Control Board following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

E. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia, 9VAC25-820. Nutrient credits certified pursuant to this chapter may be acquired to provide waste load allocations required under 9VAC25-820 to offset new or increased delivered total nitrogen and delivered total phosphorus loads.

4VAC50-80-50. Limitations and liability.

A. The department shall not accept or have responsibility or liability for performance of practices being evaluated using the procedures established in this chapter. Those persons with whom the department contracts, including those serving as technical evaluators on an advisory committee, are advisors to the department and the department remains solely responsible for decisions made regarding implementation of this chapter.

B. For the purposes of this chapter, the certification of credits which are generated from activities funded by federal or state water quality grant funds is prohibited. However, baseline levels may be achieved through the use of such grants.

C. The option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements.

Part III Administrative and Technical Criteria (RAP Meeting 2/22/2013)

4VAC50-80-60. Application procedures.

A. Nutrient credit certification preliminary application process.

1. A preliminary application, on a form provided by the department, shall be submitted by the prospective applicant to the department.

2. If additional information is necessary for the preliminary application, the department may request that the prospective applicant submit additional information.

3. If the preliminary application is acceptable, the department will send a ready-to-proceed letter to the prospective applicant. This ready-to-proceed letter may contain conditions that will need to be addressed in an application submitted pursuant to subdivision B 1 of this section.

B. Nutrient credit certification application process.

1. Application submittal. After receipt of a ready-to-proceed letter in accordance subdivision A 3 of this section, the applicant may submit an application to the department. This application shall be in the form of a Nutrient Reduction Implementation Plan and shall include the following elements:

a. A brief narrative description of the project.

b. Up to date contact information for the owner or operator who has submitted the application including name, address, and telephone number.

- c. An estimation of the number of credits to be provided, including definition of the baseline and generation of nutrient credit beyond baseline requirements. Baseline shall be determined in accordance with the requirements of 4VAC50-80-70. The number of credits shall be as calculated in accordance with accepted calculation procedures pursuant to 4VAC50-80-70.
- d. A topographic map clearly showing the site location and delineating the boundaries of the project and the specific location of the credit generating BMPs.
- e. The description of current site conditions with photos.
- f. The 8 digit and 12 digit HUC in which the project is located.
- g. For land use conversion projects and structural stormwater (BMPs), provide documentation of land use controls in place as of July 1, 2005.
- h. Authorization from the owner or operator for the department or designee for right of entry and access to property specified within the application and baseline area(s) and authorization to obtain copies of any current conservation or water quality plans necessary for the application process.
- i. A management plan which meets the requirements of 4VAC50-80-90.
- j. Proof of financial assurance as required pursuant to 4VAC50-80-100.
- k. The appropriate fee as required pursuant to Part V of this chapter.
- l. Documentation of the site protection instrument(s) for perpetual credits.
- m. Any other information deemed necessary by the department.
2. Administrative completeness review. Upon receiving an application pursuant to subdivision B 1 of this section, the department shall conduct an administrative completeness review and respond within 30 calendar days of application receipt. If the application is not administratively complete, the department will issue a comment letter to the applicant. If the application is administratively complete, the department will notify the applicant that application will be technically reviewed to determine if credits may be certified and will publish a notice on its website.
3. Technical review. Once the application is deemed administratively complete, the department will perform a technical review of the application for the suitability of credit certification. As part of the technical review, additional information may be required and the site may be visited. Additionally, if the department chooses, a certification advisory committee may be convened.
4. Approval. The department shall notify the applicant in writing of approval of certified credits or provide conditions required for credit certification in accordance with 4VAC50-80-80. If the credits cannot be approved for certification, the department shall notify the applicant in writing that the project does not qualify for any certified credits pursuant to the requirements of this part.

4VAC50-80-70. Credit calculation procedures (TO BE DRAFTED)

4VAC50-80-80. Credit certification procedures.

A. Schedule. Certified credits will be released by the department based upon completion of any conditions of approval.

B. Registry. Certified credits will be placed on the registry and classified as term or perpetual credits by the department. The registry will also indicate the number of certified credits that have been released for sale. Only these released certified credits are available for sale.

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276 **4VAC50-80-90. Management plan.**

277 The management plan shall include the following information:

278 A. For all projects:

- 279 1. Detailed written specifications and work descriptions for the nutrient credit generating
280 facility.
281 2. Maintenance plan that provides a description and schedule of maintenance
282 requirements. The maintenance plan will be used for the life of the credits and shall
283 include a description of site management activities to be performed after meeting all
284 performance standards to ensure long-term sustainability of the site.
285 3. Performance standards used to determine whether the project is achieving its
286 objectives.
287 4. Monitoring requirements for the project as specified by the department in Part IV.

288 B. For land conversion projects:

- 289 1. A Forest Stewardship Plan including management goals for the tract, a planting plan,
290 vegetative controls to manage competition and long term management procedures.
291 Forest shall be planted to achieve a minimum density of 400 woody stems per acre.
292 2. Agricultural baseline requirements included in 9VAC50-80-80.C. which apply to any
293 remaining portions of the tract, field or other land area which are not undergoing land
294 conversion. Performance standards and monitoring and reporting procedures
295 demonstrating ongoing compliance with baseline shall be included in the Management
296 Plan.

297 C. For agricultural projects:

- 298 1. Information on the location of the proposed credit generating facility and baseline
299 area(s) including geographic coordinates, US Department of Forestry Farm Service
300 Agency tract number(s), if applicable, or the locality tax parcel identification number or
301 numbers, physical address of the property.
302 2. Description of the entire farm unit, including acreage and associated information for
303 acreages inside and outside the proposed nutrient generating facility application and
304 baseline area(s), water features, environmentally sensitive features, erosion issues, and
305 agricultural activity;
306 3. Copies of current nutrient management plans developed by a certified nutrient
307 management planner and any soil conservation plans completed by a certified
308 conservation planner.
309 4. Information on the location and status of all existing and proposed BMPs including
310 implementation schedules or lifespan for each BMP.

311 D. For mitigation conversion projects:

- 312 1. A copy of the approved mitigation banking instrument.
313 2. Location and vicinity maps.
314 3. A plan clearly delineating and labeling areas to be considered for credit conversion.
315 4. A spreadsheet or table listing each labeled area. For each labeled area, the table shall
316 include:
317 a. the type of eligible land conversion;
318 b. the acreage of the area;
319 c. the available mitigation credits;
320 d. the potential nutrient credits; and

- 321 e. the ratio of mitigation credits to nutrient credits.
322 5. A procedure that ensures credits are not used for both wetland or stream credit and
323 nutrient credit purposes
324 E. For urban projects: (TO BE DRAFTED)
325
326 F. For other types of projects not meeting the conditions of B through E above, the management
327 plan shall include information as deemed appropriate by the department in order to evaluate the
328 credits for certification.
329

330 **4VAC50-80-100. Financial assurance requirements.**

331 The application will include requirements to reasonably assure the generation of the credit
332 depending on the nature of the credit generating activity and use, such as legal instruments for
333 perpetual credits, operation and maintenance requirements, and associated financial assurance
334 requirements. Financial assurance requirements may include but not be limited to letters of
335 credit, escrows, surety bonds, insurance, and, where the credits are used or generated by a
336 locality, authority, utility, sanitation district, or permittee operating an MS4 or a point source
337 permitted under Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1, its existing tax
338 or rate authority.
339

340 **4VAC50-80-110. Appeal process.**

341 Any person applying to establish a nutrient credit-generating facility or an operator of a
342 nutrient credit-generating facility aggrieved by any action of the department taken in accordance
343 with this chapter, or by inaction of the department, shall have the right to review in accordance
344 with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).
345